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*Kevin L. Smith*  
**CLERK**  
of the supreme court,  
court of appeals and  
tax court

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 49A04-1104-CR-192

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**November 23, 2011**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Taimeka Garnett (Garnett), appeals her conviction for public intoxication, a Class B misdemeanor, Ind. Code § 7.1-5-1-3.

We affirm.

## ISSUE

Garnett raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that she was publicly intoxicated.

## FACTS AND PROCEDURAL HISTORY

On February 1, 2011, Garnett arrived at the Marion County Probation Department for a scheduled appointment with her probation officer, Travis Hodges (Hodges). Prior to her meeting, Garnett had consumed “two tall cans of beer” and prescription medication. (Transcript p. 24). When Hodges met with Garnett, he smelled alcohol on her. He contacted Marion County Sheriff Deputy Tom Jadrach (Deputy Jadrach) and asked him to investigate. When Deputy Jadrach arrived, he also smelled alcohol on Garnett and noted that she had bloodshot eyes, seemed confused, and was slurring her speech. Deputy Jadrach performed a portable breath test on Garnett and discovered that she had a blood alcohol level of .07. He also conducted an eye nystagmus test and found that Garnett’s eyes could not track him; instead, her eyes jerked and had an involuntary twitch.

On February 1, 2011, the State filed an Information charging Garnett with public intoxication as a Class B misdemeanor, I.C. § 7.1-5-1-3. On March 24, 2011, the trial court held a bench trial and found Garnett guilty as charged. The trial court sentenced her to 180 days incarceration, with two days executed and 178 days suspended. Garnett was given one day of credit and ordered to complete twenty hours of community service.

Garnett now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Garnett argues that the State failed to present sufficient evidence to support her conviction for public intoxication beyond a reasonable doubt. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of witnesses. *Perez v. State*, 872 N.E.2d 208, 213 (Ind. Ct. App. 2007), *trans. denied*. In addition, we only consider the evidence most favorable to the judgment and the reasonable inferences stemming from that evidence. *Id.* We will only reverse a conviction when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.* at 212-13.

In order to convict Garnett of public intoxication, the State was required to prove beyond a reasonable doubt that Garnett was “in a public place . . . in a state of intoxication caused by [her] use of alcohol or a controlled substance.” I.C. § 7.1-5-1-3. Garnett does not dispute that she was in a public place or that she was intoxicated; rather, she argues that the State failed to prove that her intoxication was caused by alcohol rather than her use of prescription drugs.

In support of her argument, Garnett cites *Upp*, in which we held that sniffing glue was not sufficient to support Upp's conviction for public intoxication because his intoxication had not resulted from either alcohol or a controlled substance, as required under the Indiana Code. *Upp v. State*, 808 N.E.2d 706, 707 (Ind. Ct. App. 2004). However, in *Upp*, there was no evidence that Upp's intoxication had resulted from alcohol. Here, Garnett admitted to drinking beer before her appointment, had a blood alcohol level of .07, and smelled like alcohol according to both Hodges and Deputy Jadrich. Therefore, as Garnett does not dispute that she drank alcohol and that she was intoxicated, we conclude that there was sufficient evidence to convict her of public intoxication.

#### CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to prove beyond a reasonable doubt that Garnett was publicly intoxicated.

Affirmed.

NAJAM, J. and MAY, J. concur